No. 98-97

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In The

Supreme Court of the United States

October Term, 1997

ELOISE ANDERSON, Director of the California Department of Social Services; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; PETE WILSON, Governor of the State of California; CRAIG BROWN, Director of the California Department of Finance,

Petitioners,

v.

BRENDA ROE AND ANNA DOE, on behalf of themselves and all others similarly situated,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should grant review of the decisions below which, consistent with the decisions of all lower courts to consider the question and with this Court's longstanding precedents prohibiting discrimination based on length of residency, held unconstitutional a state statute that discriminates against bona fide state residents who have settled in the state within the past 12 months.

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I. INTRODUCTORY STATEMENT

The unconstitutionality of California's durational residency requirement does not raise a novel question, but is squarely dictated by this Court's long-settled precedent, which lower courts have uniformly applied to invalidate similar state laws. This Court has consistently recognized that state classifications treating one group of state residents less favorably than another, because of the disfavored group's recent migration from another state, violate equal protection and the right to travel. California's one-year durational residency requirement nevertheless ties the level of work-based public assistance to the length of residency, in an express effort to discourage migration from other states. As every lower court to consider the question has easily concluded, such a two-tiered scheme is plainly unconstitutional under this Court's durational residency jurisprudence.

The principle of free interstate migration stretches at least as far back as *The Passenger Cases*, 48 U.S. (7 How.) 283 (1849), continuing through *Shapiro v. Thompson*, 394 U.S. 618 (1969) and *Zobel v. Williams*, 457 U.S. 55 (1982), to *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 905 (1986). Under this line of authority, bona fide residents of a state may not be subjected to less favorable treatment based on the length of time they have resided in that state. Petitioners do not argue for overruling of this authority – and quite properly so, since it has in no sense proven "unworkable" and there has been no "evolution of legal principle [which] has left [its] doctrinal footings weaker than they were. . . . " *Planned Parenthood v. Casey*, 505 U.S. 833, 855-57 (1992) (joint opinion of O'Connor, Kennedy and Souter, JJ.).

There is no substantial question as to the unconstitutionality of California's 12-month durational residency requirement under this Court's holdings. To the extent that Petitioners have previously argued that there is uncertainty over this question, any such uncertainty has dissipated in the three and one-half years since this Court vacated as unripe the predecessor to this case, *Anderson v. Green*, 513 U.S. 557 (1995). During that period, **every court** which has examined the constitutionality of like statutes has interpreted this Court's durational residency jurisprudence to prohibit their implementation. In all, at least ten separate courts, federal and state, have already enjoined just such laws – and California's statute is, if anything, the most constitutionally egregious of all. Notwithstanding this Court's repeated admonition that the aim of "inhibit[ing] the immigration of indigents" is "constitutionally impermissible," *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 263-64 (1974), the expressly trumpeted purpose of California Welfare & Institutions Code § 11450.03 is to deter poor families from settling in California.

Nor, contrary to Petitioner's argument, is the issue of what standard of review should be applied of any significance at all. Whether applying strict scrutiny or rational basis review, all the lower courts have struck down two-tiered benefits schemes like the one at issue. Given the lower courts' uniform conclusion and the absence of any important constitutional question, the Petition should be denied.

II. STATEMENT OF THE CASE

A. THE CALIFORNIA STATUTE

The California durational residency statute, Welfare & Institutions Code § 11450.03, facially discriminates against newcomer residents by restricting their maximum CalWORKs assistance to the level of their prior state of residence.[1] Section 11450.03 is the same statutory provision invalidated in *Green v. Anderson*, 811 F. Supp. 516 (E.D. Cal. 1993), *aff'd*, 26 F.3d 95 (9th Cir. 1994), *vacated as unripe sub nom, Anderson v. Green*, 513 U.S. 557. The language of the statute mandates that eligible families who have resided in the state for less than twelve consecutive months immediately before applying cannot receive CalWORKs assistance any higher than "the maximum aid payment that would have been received by that family from the state of prior residence." Cal. Welf. & Inst. Code § 11450.03(a). Californians who have resided in the state for at least one year receive CalWORKs benefits at the level the State of California has deemed appropriate to

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[1] Throughout its petition, the State refers to the assistance program at issue as AFDC (Aid to Families with Dependent Children), although, as it correctly points out, the federal AFDC program was repealed and replaced with a new program named Temporary Assistance to Needy Families ("TANF"). *See* Pet., pp. 3-4 & nn. 1, 4. In California, the program adopted by the State legislature is titled CalWORKs. Cal. Welf. & Inst. Code § 11200 *et seq*. CalWORKs is a work-based program which requires participants to participate in work activities while receiving aid. Cal. Welf. & Inst. Code § 11320.1. It is also time-limited in that a participant is removed from assistance after receiving aid for a total of 60 months. Cal. Welf. & Inst. Code § 11320.15.

their subsistence requirements. On the other hand, Californians who have lived in the state for less than one year – even though no less bona fide California residents – are limited to the lesser assistance levels they would have received in Oklahoma, Mississippi, or whatever other state from which they moved, if that state's assistance levels were lower. Newcomer families from states with assistance levels **lower** than California's thus receive the lower amount of the states from which they came, while newcomer families from states with **higher** assistance levels receive benefits at the lower California levels. *Id.*

Under this rule, families that have migrated from other states within the past year will receive a small fraction – as little as 21% – of that received by otherwise identical families. For example, while the ordinary monthly grant for a family of four in California is $673, a family of four that has moved from Mississippi to California within the past year would receive only $144 per month – irrespective of whether the family could survive at that level in California, which has one of the highest costs of living in the United States. SER 19, 188, 205-09.[2]

Under the Ninth Circuit's decision in *Beno v. Shalala*, 30 F.3d 1057 (9th Cir. 1994), invalidating the waivers needed to implement the statute, the State of California had been prevented from implementing its two-tiered scheme. With the enactment of the 1996 federal welfare law, the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), state officials concluded

[2] References to the record are contained in the Supplemental Excerpts of Record ("SER"), which respondents filed with the Ninth Circuit.

that a waiver was no longer necessary, and decided to proceed once more with implementation of section 11450.03.[3] In February 1997, California directed counties to implement section 11450.03 effective April 1997. SER 7-10.

1. The Purpose of the Statute

As both the district court and court of appeals concluded: "[T]he apparent purpose of § 11450.03 was to deter migration of poor people to California." *Roe v. Anderson*, 134 F.3d 1400, 1404 (9th Cir. 1998). In striking down this provision, the district court cited its previous analysis, contained in *Green v. Anderson*, of California's "two-tier system under § 11450.3." *Roe v. Anderson*, 966 F. Supp. 977, 983 (E.D. Cal. 1997). In *Green*, the district court found ample evidentiary support for "the conclusion that the purpose of § 11450.03 was to deter migration of indigents." *Green*, 811 F. Supp. at 522 n.14. It also found that the legislative history of the statute confirmed the statute's plain text. *Id.* ("[S]uch a purpose is inherent in a two-tier benefit structure" that "affects only the benefits of new residents" rather than "cutting all recipients' benefits equally.")[4] The Ninth Circuit reached this same conclusion in *Beno v. Shalala*, noting that the residency

[3] PRWORA amended the Social Security Act, 42 U.S.C. § 601 *et seq.*, to replace AFDC with Temporary Assistance to Needy Families ("TANF") and requires each state to submit a TANF plan. *See supra* note 1.

[4] *See also Green*, 811 F. Supp. at 522-23 ("If the measure intends to deter settlement into the state of persons who need welfare and seek a higher benefit, it is sensibly designed but has an unconstitutional purpose. If the measure simply seeks to

requirement "aims to discourage poor families from moving to California by limiting recent entrants' AFDC benefits to the amount received in their state of former residence." 30 F.3d at 1061.

The statute had its origins in a ballot initiative first introduced by Governor Pete Wilson on December 10, 1991. The Governor campaigned publicly for the ballot initiative as a measure to keep poor people in need of welfare from coming to California. Literature encouraging voters to place the proposed initiative on the November 3, 1992 ballot described its objective as to "**STOP** out of state welfare recipients from moving to California just to increase their grants." SER 49 (emphasis in original).

Campaign materials favoring the measure, Proposition 165, proclaimed the same purpose. For example, a widely distributed "fact sheet" stated that the proposition "***LIMITS WELFARE PAYMENTS TO NEWCOMERS*** – To reduce any incentive to come to California solely for higher welfare benefits." SER 51 (emphasis in original). In the official ballot argument on behalf of the initiative, Governor Wilson articulated as the initiative's selling point that "people move to California to collect welfare," and that "[n]ew state residents would receive no more in

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save costs, defendants fail to explain why new residents are better able to bear a reduction in benefits than other residents. For the measure applies to those who were on welfare in the state of prior residence and those who were not, those who need welfare when they arrive in California and those who come to that need months thereafter. Stripped of the unconstitutional purpose of deterring migration, the measure lacks a rational design. This group of residents is no better able to bear the loss of benefits than a group randomly drawn.").

welfare here than in their home state, to end California's status as a welfare magnet." SER 64.

At the same time that the Governor sought voter approval for the initiative, he promoted legislation with the identical end. The State Legislative Analyst's report on the measure stated that "[t]he concern driving these policy proposals is that people receiving assistance in low-benefit states are encouraged to move to high-benefit states in order to take advantage of the higher benefit." SER 85.

The Secretary for the California Health and Welfare Agency requested then-required waivers from the federal government for both Proposition 165 and the companion legislation. SER 67. The waiver request letters for each expressly identified as the sole objective of the residency requirement "reduc[ing] the incentive for families to migrate to California for the purpose of obtaining higher aid payments." *Green*, 811 F. Supp. at 522 n.14. Although the ballot initiative was ultimately defeated at the polls, its legislative counterpart was adopted and signed by the Governor on September 14, 1992. 10 West's Cal. Leg. Serv. 2897 (1992).

As the court of appeals noted: "At oral argument before this court, in response to the suggestion that the purpose of § 11450.03 is to keep poor people out of the state, the state conceded that it does not want people to move to California 'with a mind-set of economic dependency.' " *Roe*, 134 F.3d at 1404. In the predecessor *Green* litigation, on the day the litigation was filed, Petitioner Eloise Anderson, Director of the California Department of Social Services, issued a news release pronouncing that

the measure aimed to "discourag[e] people from coming to California just for higher welfare benefits." In the State's brief opposing the temporary restraining order, it listed "among the bases for implementation of the statute: 'to prevent California from being a magnet for people seeking to increase the level of their public assistance benefits by moving to California.' " *Green*, 811 F. Supp. at 522 n.14. And in its brief to this Court, the State attributes to Congress the intent of "protect[ing] states . . . from becoming 'welfare magnets.' " Pet., p.8.

While the State now claims cost-savings as its rationale for the durational residency requirement, the undisputed record showed that California could have accomplished the same savings simply by reducing benefits across-the-board by about 72 cents per person per month. SER 282 ($22.8 million divided by 12 months, divided by 2,645,814 recipients); *see also Roe v. Anderson*, 966 F. Supp. at 985 (finding that "the State may save a comparable amount of money by a very minor reduction in the benefits paid to all AFDC recipients") & n.20.

2. The Impact of the Statute

The named Plaintiffs each moved to California for reasons unrelated to the receipt of welfare benefits; rather, each moved to pursue employment. *Roe*, 966 F. Supp. at 980. For example, Brenda Roe had never previously been on welfare. She lacked any awareness of CalWORKs, TANF or AFDC when she and her husband decided to leave Oklahoma and settle in California. SER 231. The median monthly average rents in Long Beach, California, where she and her family reside, are $300 for a

studio apartment and $450 to $650 for a one-bedroom apartment. SER 233. She was informed by the State social services office that she would be limited to the Oklahoma monthly grant level of $307, as compared to the California grant level of $565. 966 F. Supp. at 980. As the district court found: "Both of the named plaintiffs have been unable to locate housing in California that they could afford on the reduced grant." *Id.* at 985.

The undisputed evidence showed that "although in absolute terms California benefit levels rank as the sixth highest grant level in the United States," "when housing costs are factored in, California benefit payments rank 18th in the nation." *Id.* at 981. The district court noted that "defendants do not disagree with plaintiffs' contention that there will be disparities, even significant disparities, among California AFDC recipients as between newcomers and recipients who have resided in the state for one year." *Id.* at 982-83.[5] The State submitted no evidence in support of the "welfare magnet" hypothesis; instead, all of the evidence before the court demonstrated that "persons do not move from state to state to seek higher AFDC benefits." *Roe*, 966 F. Supp at 982. *See also id.*

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[5] The amount that newcomers receive would fall substantially short of what is required to subsist – or even to pay rent – in California. In all but two of the states where the maximum aid payment is lower than California's, the cost of living is also below that of California. SER 206-07. The fair market rent for even a one-bedroom apartment in California exceeds the entire assistance grant in nearly every state. SER 205. There are 15 states in which the maximum assistance benefit for a family of three is less than **half** the fair market rent for a one-bedroom apartment in California. SER 207.

at 985 ("The record does not support a finding that there will be an influx of poor persons to California because of California's benefit levels.").

B. PROCEEDINGS BELOW

The district court granted a preliminary injunction against enforcement of the durational residency statute, holding that it imposed an impermissible burden on the fundamental constitutional right to freedom of migration and, alternatively, that it irrationally discriminated based on length of California residency in violation of the Equal Protection Clause. *Roe v. Anderson*, 966 F. Supp. at 983-85 (adopting analysis of "Supreme Court's right of migration and equal protection cases" set forth in *Green v. Anderson*, 811 F. Supp. 516). The court of appeals affirmed the preliminary injunction, concluding that the district court did not err in its determination that Plaintiffs had demonstrated a probability of success on the merits. 134 F.3d at 1404 (citing *Green v. Anderson*, 26 F.3d 95, 96 (9th Cir. 1994)). In particular, the court of appeals reaffirmed that the durational residency requirement violated the Equal Protection Clause by drawing "unconstitutional distinctions . . . among residents of a state." 134 F.3d at 1404. The court of appeals also adhered to the district court's determination that this durational residency requirement was predicated upon the impermissible purpose of "deter[ring] migration of poor people to California." *Id.*

III. REASONS FOR DENYING THE WRIT

A. THIS COURT'S CONSISTENT HOLDINGS COMPEL THE CONCLUSION, REACHED BY THE COURTS BELOW, THAT THE CALIFORNIA STATUTE VIOLATES THE RIGHT TO TRAVEL AND THE EQUAL PROTECTION CLAUSE

1. The Court Has Repeatedly Held that the Constitution Does Not Permit Laws Designed to Inhibit or Penalize Migration Between States

This Court has consistently recognized that a law enacted for the purpose of inhibiting migration into the state is virtually *per se* unconstitutional. *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 620 n.9 (1985); *Zobel v. Williams*, 457 U.S. 55, 62 n.9 (1982); *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 263-64 (1974); *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969). This prohibition is rooted in the principle of free interstate travel and migration, which has long received this Court's "unquestioned historic acceptance." *Attorney General of New York v. Soto-Lopez*, 476 U.S. at 902 (plurality opinion).[6] It applies

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[6] As explained by this Court over a century ago:

> For all the great purposes for which the Federal government was formed we are one people, with one common country. We are all citizens of the United States, and as members of the same community must have the right to pass and repass through every part of it without interruption, as freely as in our own States.

Crandall v. Nevada, 73 U.S. (6 Wall.) 35, 48-49 (1868) (quoting *The Passenger Cases*, 48 U.S. (7 How.) at 492 (Taney, C.J., dissenting));

equally where, as here, the newcomers sought to be excluded are poor. Recognizing that "the purpose of inhibiting migration **by needy persons** into the state is constitutionally impermissible," this Court has held that "a State may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally." *Shapiro*, 394 U.S. at 629 (emphasis added), 631.

Since *Shapiro*, this Court has consistently reaffirmed that a statute intended to deter or restrict interstate migration by indigents – even those seeking social services – necessarily requires strict scrutiny. For example, in *Memorial Hospital*, the Court stated that "to the extent the purpose of the requirement is to inhibit the immigration of indigents generally, that goal is constitutionally impermissible." *Memorial Hospital*, 415 U.S. at 263-264 (citations omitted).[7]

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see also United States v. Guest, 383 U.S. 745, 758 (1966) ("a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created"); *Edwards v. California*, 314 U.S. 160, 173-74, (1941); *Kent v. Dulles*, 357 U.S. 116, 126 (1958); *Shapiro v. Thompson*, 394 U.S. at 629-31, 634; *Dunn v. Blumstein*, 405 U.S. 330, 338 (1972); *Memorial Hospital*, 415 U.S. at 254; *Zobel v. Williams*, 457 U.S. at 60 n.6; *Attorney General of New York v. Soto-Lopez*, 476 U.S. at 901-03.

[7] *See also Memorial Hospital v. Maricopa County*, 415 U.S. at 282 (Rehnquist, J., dissenting) (distinguishing the Arizona law from one that "was specifically designed to . . . deter indigent persons from entering the State of California"); *id.* at 283 (distinguishing a "purposeful attempt to insulate the State from indigents"); *id.* at 284 ("purposeful barriers [were] struck down in *Edwards* and *Shapiro*"); *id.* at 285 ("the Court should examine . . . whether the challenged requirement erects a . . . purposeful barrier").

More recently, the Court reiterated this unconstitutional purpose doctrine. In both *Zobel* and *Hooper*, the Court underscored that a "state objective to inhibit migration into the State would encounter 'insurmountable constitutional difficulties.' " *Hooper*, 472 U.S. at 620 n.9 (quoting *Zobel*, 457 U.S. at 62 n.9 and citing *Shapiro*, 394 U.S. at 629). *See Attorney General of New York v. Soto-Lopez*, 476 U.S. at 903 (plurality); *id.* at 920-22 (dissent). As Justice O'Connor further explained in her *Zobel* concurrence,

> It is difficult to imagine a right more essential to the Nation as a whole than the right to establish residence in a new State. Just as our federal system permits the States to experiment with different social and economic programs, *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting), it allows the individual to settle in the State offering those programs best tailored to his or her tastes.

Zobel, 457 U.S. at 76-77 (O'Connor, J. concurring in judgment).

2. The Court Has Consistently Held That the Equal Protection Clause Does Not Allow States to Treat Some Bona Fide Residents Less Favorably Than Others Based on Their Length of Residency

In keeping with the prohibition against state laws inhibiting interstate migration, the Court has long held that the Equal Protection Clause bars discrimination against newcomer state residents and the State does not challenge this jurisprudence. The Court has accordingly

pointed out that "[i]n reality, right to travel analysis refers to little more than a particular application of equal protection analysis. Right to travel cases have examined, in equal protection terms, state distinctions between newcomers and longer term residents." *Zobel*, 457 U.S. at 61; *see also Soto-Lopez*, 476 U.S. at 904 n.4 ("Of course, regardless of the label we place on our analysis – right to migrate or equal protection – once we find a burden on the right to migrate the standard of review is the same.").

No state, of course, could erect a wall at its borders to block out citizens of other states. By the same token, this Court has frequently affirmed the principle that no state may erect an invisible wall against interstate migration in the form of discriminatory treatment of new arrivals. As the district court put it: "It is this equal treatment aspect of the right to migration – rather than the prohibition on direct barriers to movement – that has been most important in the more recent cases." *Green*, 811 F. Supp. at 518. Far from an uncharted area of law requiring guidance, this Court has long protected new residents of a state "from being disadvantaged, or from being treated differently, simply because of the timing of their migration." *Soto-Lopez*, 476 U.S. at 904-05 (plurality opinion) (citing *Hooper v. Bernalillo County Assessor*, 472 U.S. at 618 n.6; *Zobel*, 457 U.S. at 60 n.6; *Memorial Hospital*, 415 U.S. at 261; *Shapiro*, 394 U.S. at 629-31).

The Court has therefore generally subjected such discrimination against new state residents to strict scrutiny under the Equal Protection Clause. "[A]ny classification which serves to penalize the exercise of th[e] right [to travel], unless shown to be necessary to promote a compelling governmental interest, is unconstitutional." *Shapiro*, 394 U.S. at 634 (emphasis in original).

Under this exacting standard, this Court has without exception struck down durational residency requirements with respect to benefits that support the "basic necessities of life." In *Shapiro*, the Court invalidated state denial of welfare assistance to residents who had not yet lived for a year within the state. And in *Memorial Hospital v. Maricopa County*, 415 U.S. 250, the Court invalidated state denial of publicly funded non-emergency medical care to residents who had not yet lived for a year within the state. *Id.* at 261 ("the right of interstate travel must be seen as insuring new residents the same right to vital government benefits and privileges in the States to which they migrate as are enjoyed by other residents.").[8] As the Court later noted in *Maher v. Roe*, 432 U.S. 464 (1977), *Shapiro* and *Memorial Hospital* "recognized that denial of welfare to one who had recently exercised the right to travel across state lines was sufficiently analogous to a criminal fine to justify strict judicial scrutiny." *Id.* at 474 n.8; *see also Dunn v. Blumstein*, 405 U.S. at 339-60 (invalidating one-year residency requirement for voting).

Even where this Court has declined to apply strict scrutiny, it has nonetheless invalidated state schemes that make public benefits dependent upon the timing of one's

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[8] *See also Memorial Hospital*, 415 U.S. at 259 ("[G]overnment privileges or benefits necessary to basic sustenance have often been viewed as being of greater constitutional significance than less essential forms of governmental entitlements."(listing cases).)

residency in the state. In *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, for example, this Court struck down as irrational a New Mexico law granting a tax exemption to Vietnam veterans only if they had resided in the state prior to a specified date. And in *Zobel v. Williams*, 457 U.S. 55, this Court invalidated as irrational an Alaska statute that distributed income from natural resource development to state residents based upon the year in which they had established residency in the state.

3. No Novel Constitutional Question is Implicated by the California Statute, Which Treats Some Californians Less Favorably Than Others Based on Their Length of Residency

The State here does not directly question the fundamental principle of free interstate migration, nor does it seek to overturn the well-established body of case law under the Equal Protection Clause.[9] Rather, it attempts to

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[9] The State quite properly does not ask for overruling of this line of authority, given that there have been no legal or factual developments that would justify failure to follow the principle of *stare decisis*. Reliance on the principle of free interstate migration extends back not just one, but many generations. *Cf. Planned Parenthood v. Casey*, 505 U.S. at 860 (joint opinion of O'Connor, Kennedy and Souter, JJ.) (observing that in the nineteen years since *Roe v. Wade*, 410 U.S. 113 (1973), "[a]n entire generation has come of age"). This line of authority has in no sense proven "unworkable" nor has there been any "evolution of legal principle [which] has left [its] doctrinal footings weaker than they were. . . ." *Id.* at 855-57. The factual backdrop here has not changed so as to require revisiting this Court's prior holdings. Free interstate migration – and the

distinguish this case from this Court's durational residency requirement holdings by repackaging arguments that have already been expressly repudiated by this Court. The purported distinctions advanced by the State cannot be sustained without effectively overruling many of the cases just cited, and leaving the Court's jurisprudence in tatters. Petitioners' arguments thus offer no sound basis for granting review.

We address the State's two principal claims in turn.

a. The California statute creates a two-tiered benefits scheme based on length of residency with the impermissible purpose of deterring migration

The State first argues that California's statute can be distinguished from those struck down by this Court, because it does not completely deny welfare benefits to new residents, but limits new residents to the amount they would have received in their prior states of residence. This argument cannot save the California durational residency statute, which implicates the rights of interstate migration and equal protection just as surely as other laws that this Court has held unconstitutional.

As a factual matter, the denial in *Shapiro* was not in all instances total either. Although this Court pointed out

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corresponding requirement that bona fide residents be treated equally regardless of when they arrived – remains a "necessary concomitant" of the United States. *United States v. Guest*, 383 U.S. at 758.

that two of the three states there, Connecticut and Pennsylvania, gave "partial assistance," their schemes were nevertheless invalidated. *Shapiro*, 394 U.S. at 635. Just as in *Shapiro*, the primary purpose of California's statute is to prevent indigents from coming here to live. Just as in *Shapiro*, it does so by denying new residents the basic necessities of life – that is, the level of assistance the state legislature has deemed appropriate for subsistence in California. And just as in *Shapiro*, the statute penalizes residents who have come to the state for reasons utterly unrelated to the receipt of welfare assistance. There is nothing innovative about either the motivation for or the results of California's durational residency requirement.

The State's petition, and its ultimate defense of its statute, necessarily hinges upon a claim that is neither novel nor substantial in light of this Court's repeated holdings. In particular, the State argues that the relevant comparison for equal protection purposes is **not** between newcomer and longer-term California residents, but instead between newcomer California residents and **residents of other states**. *See* Pet., p. 18. This argument is directly contrary to this Court's durational residence jurisprudence, and leaves the results in prior cases inexplicable.

For example, if the State's formulation were correct, *Zobel* would necessarily have come out the opposite way. No state other than Alaska provided bounty payments to its citizens based on years of state residency. Under the State's argument, then, Alaska should have been free to pay new Alaska residents precisely the bounty that residents of other states received: nothing at all. As the Court recognized, however, the proper analysis looks to the

inequality of distribution as between new and longer term residents. *Zobel*, 457 U.S. at 60-65.[10]

Indeed, were the State's mode of comparison the right one, states without any income tax would be free to impose income taxes on newcomer state residents alone, for the purpose of discouraging them from migrating or to augment state revenues. For instance, New Hampshire, Washington and Florida, none of which have an income tax, could establish durational residency requirements such that the income of newcomer residents could be taxed at the rates they would have been assessed in their prior states of residence. Such a taxation scheme would present no constitutional problems under the State's analysis, since newcomer residents would be paying the same taxes as residents of the states from which they came.

b. The State's asserted interest in conserving resources cannot support its two-tiered benefits system

Disregarding the statute's text and the legislative history affirming deterrence of migration as section 11450.03's main objective, their own prior representations, and the determinations by both the Court of Appeals and the district court, Petitioners now advance

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[10] Since the State now asserts only fiscal requirements for the durational residency requirement, its attempted distinction of *Zobel* as a permanent classification makes no sense. Surely if it is rational to save money on the backs of newcomers for a year, it would seem to be rational to do so permanently.

conservation of the State's fiscal resources as the principal purpose of its durational residency requirement. This argument too would require jettisoning this Court's settled decisions holding that the goal of saving money does not rise to the level of a compelling state interest.

Nor could such an objective, even if compelling, possibly justify the two-tiered scheme adopted by California. As this Court observed in upholding states' maximum grant schemes, state flexibility must not offend constitutional strictures: "Although a State may adopt a maximum grant system . . . , it may not, of course, impose a regime of invidious discrimination in violation of the Equal Protection Clause. . . . " *Dandridge v. Williams*, 397 U.S. 471, 483 (1970). Likewise, in *Shapiro*, this Court held:

> We recognize that a state has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. . . . [A]ppellants must do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot justify an otherwise invidious classification.

394 U.S. at 633 (footnote omitted).

In *Memorial Hospital*, this Court reiterated:

> [A] State may not protect the public fisc by drawing an invidious distinction between classes of its citizens . . . , so appellees must do more than show that denying free medical care to new residents saves money. The conservation of the taxpayers' purse is simply not a sufficient

> state interest to sustain a durational residence requirement which, in effect, severely penalizes exercise of the right to freely migrate and settle in another State . . .

415 U.S. at 263 (citation omitted). *See also Sosna v. Iowa*, 419 U.S. 393, 406 (1975) ("budgetary or recordkeeping considerations . . . insufficient to outweigh the constitutional claims.")[11]

4. Even If Rational Basis Review Is Applied, the Unconstitutionality of the California Statute Is Confirmed by this Court's Decisions Invalidating Durational Requirements

As set forth above, the State's argument that California's durational residency requirement should be subjected to rational basis analysis already has been foreclosed by this Court, and does not serve as a basis for granting review. Moreover, as the courts below have

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[11] California made an almost identical argument over half a century ago, with respect to a law reflecting "grave and perplexing social and economic dislocation . . . [which] is a matter of common knowledge and concern." *See Edwards v. California*, 314 U.S. 160, 173 (1941) ("The State asserts that the huge influx of migrants into California in recent years has resulted in problems of health, morals, and especially finance, the proportions of which are staggering. . . . But this does not mean that there are no boundaries to the permissible area of State legislative activity. There are. And none is more certain than the prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders.").

found, the State cannot justify section 11450.03(a) even under rational basis review. The only purpose that could possibly explain the two-tiered scheme set up by the State of California – that of discouraging poor families from migrating – is a blatantly impermissible one. The distinction the California statute draws is, if anything, less rational than those invalidated in *Zobel*, *Hooper* and *Soto-Lopez*. Thus, even if the question presented by Petitioners were answered in the affirmative, it would not warrant reversal of the lower courts' holdings. It does not merit review.

While saving money is a legitimate state interest, this Court has made clear that distinctions between newer and longer-term residents bear no rational relation to this goal. *See, e.g., Zobel*, 457 U.S. at 61; *Shapiro*, 394 U.S. at 633 n.11. California offers no reason why newcomers should bear a disproportionate share of the financial burden of ameliorating the state's fiscal problems by receiving lesser benefits than other state residents.[12] And, as

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[12] As the district court specifically found, new residents are no better able to bear the loss of subsistence level benefits than longer-term residents. *Green*, 811 F. Supp. at 523 ("This group of residents is no better able to bear the loss of benefits than a group randomly drawn."). As one legislator noted during legislative debate:

> What we are saying to children is, if your family happened to come here from another state looking for a job, and even found a job but was then [laid] off that job, and there is no unemployment insurance; there is no other job opportunity, and to take care of your children you must be on welfare, that somehow their stomachs are a little bit smaller than the stomach of the person who lives next door who has lived in this state over a year; that their need for clothing for a young child going to school is a little bit less than the child living across the street who may also be on welfare through no fault of the child, because the parent has been unable to find a job; that somehow that clothing will be a little bit cheaper because they will have some sort of certificate saying they haven't been here a year.

SER 115 (comments of Assemblyman Burton).

explained above, the undisputed record was that California could, for less than a dollar per person per month, easily save the same amount without visiting deprivation exclusively on newcomers.

Contrary to the State's suggestion, there is nothing exceptional about today's (or, in California's case, yesterday's) economic climate that suggests a need to grant review for purposes of revising the Court's jurisprudence so as to permit discriminatory classifications where none were sanctioned before. To allow states "in times of stress and strain" to recreate themselves as fortresses of economic isolation would "invite a speedy end of our national solidarity." *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 523 (1934). Difficult economic times have never before led this Court to excuse the absence of any rational basis for treatment of newer state residents as second-class citizens.

The irrationality of California's statute is patently demonstrated by the fact that many interstate migrants are women who must flee in order to escape domestic violence. SER 212-16, 319-21, 323-26. As the uncontroverted record before the district court indicated,

because abusers often stalk victims who leave, abused women can in many cases put an end to the threat of continuing violence only by moving a great distance away from the abuser. *Id.* Forced to leave their financial resources and jobs behind, such women and their children are in an especially precarious economic position. Yet California's two-tiered welfare scheme would hit these women especially hard – without adequate financial assistance, many would be left to either return to their batterers or to face homelessness. *See Casey*, 505 U.S. at 892 (joint opinion of O'Connor, Kennedy and Souter, JJ.) ("Many abused women . . . return to their husbands, in large part because they have no other source of income.").[13]

5. Congress Cannot Authorize the States to Violate the Constitution and Has Not Done So Here

Nothing in the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA") licenses any undercutting of the Court's durational residency jurisprudence, nor affords any grounds for review. Here, again, this Court has repeatedly foreclosed any argument that Congress could somehow sanction what would otherwise constitute impermissible infringement of the Equal Protection Clause. The issue is not a novel one, and

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[13] In deliberating on welfare reform in 1996, both houses of Congress expressly recognized that large numbers of women receiving AFDC – 50% to 80% – were victims of abuse. Budget Reconciliation Bill, H. Cong. Res. 178, S. 412, *Cong. Rec.* H6267 (June 12, 1996); *Cong. Rec.*, S6168 (June 13, 1996).

Petitioners neither seek to overturn this Court's holdings in this area, nor provide any basis why the PRWORA makes review any more appropriate.

This Court has repeatedly reaffirmed the bedrock principle, ignored by Petitioners, that: "Although we give deference to congressional decisions and classifications, neither Congress nor a State can validate a law that denies the rights guaranteed by the Fourteenth Amendment." *Mississippi University for Women v. Hogan*, 458 U.S. 718, 732-33 (1982) (rejecting an argument by a state university that Congress had authorized it to deny enrollment to qualified males); *Townsend v. Swank*, 404 U.S. 282, 291 (1971); *Graham v. Richardson*, 403 U.S. 365, 382 (1971) ("Although the Federal Government admittedly has broad constitutional power to determine what aliens shall be admitted to the United States, the period they may remain, and the terms and conditions of their naturalization, Congress does not have the power to authorize the individual States to violate the Equal Protection Clause"); *Katzenbach v. Morgan*, 384 U.S. 641, 651 n.10 (1966); *Macias v. Finch*, 324 F. Supp. 1252, 1258 (N.D. Cal. 1970) (three-judge court), *aff'd sub nom., Macias v. Richardson*, 400 U.S. 913 (1970).

Shapiro v. Thompson in fact squarely rejected the claim that a permissive federal statute could insulate a state statute imposing a durational residency requirement: "Congress may not authorize the States to violate the Equal Protection Clause." 394 U.S. at 641. Just as in *Shapiro*, what is being challenged here is not any federal law, but a state statute: "[I]t is the responsive **state** legislation which infringes constitutional rights. By itself [the federal statute] has absolutely no restrictive effect. It is

therefore not that statute but only the state requirements which pose the constitutional question." *Id.* at 641. This aspect of *Shapiro* plainly controls here. Section 604(c) does not require the states to take any action, let alone unconstitutional action.

B. LOWER COURTS HAVE UNIFORMLY AND RECENTLY CONSTRUED THIS COURT'S DURATIONAL RESIDENCY JURISPRUDENCE TO INVALIDATE STATUTES LIKE CALIFORNIA'S

There is no split of authority warranting this Court's review of the decision below. The State acknowledges five decisions in which the constitutionality of durational residency requirements like California's have been litigated. Pet., p. 10.[14] In fact, there are several additional decisions striking down or enjoining similar durational residency requirements for public assistance. *Mitchell v. Steffen*, 504 N.W. 2d 198, 203 (Minn. 1993), *cert. denied*, 510

[14] The states and cases cited by Petitioners are: Rhode Island, *Westenfelder v. Ferguson*, 998 F. Supp. 146 (D.R.I. 1998) (order granting preliminary injunction), *appeal docketed*, No. 98-1431 (1st Cir. May 14, 1998); Pennsylvania, *Maldonado v. Houstoun*, 177 F.R.D. 311 (E.D. Pa. 1997) (order granting preliminary injunction), *appeal docketed*, No. 97-1893 (3d Cir. Nov. 20, 1997); Minnesota, *Davis v. Doth*, No. 62-C6-97-010231 (Minn. St. Dist. Ct. Dec. 5, 1997 and July 31, 1998) (orders granting temporary and permanent injunction respectively); Washington, *Ruffin v. Quasim*, No. C97-5767 FDB (W.D. Wa. Feb. 6, 1998) (order granting preliminary injunction); and New Jersey, *Sanchez v. Department of Human Services*, No. A-466-97T1F, 1998 N.J. Super. LEXIS 336 (N.J. Super. Ct. App. Div. Jul. 8, 1998) (granting injunction).

U.S. 1081 (1994) (holding six-month residency requirement "unconstitutional under the equal protection clause of the United States Constitution"); *Aumick v. Bane*, 161 Misc.2d 271, 612 N.Y.S.2d 766 (N.Y. Sup. Ct. 1994) (permanently enjoining six-month residency requirement); *Brown v. Wing*, 241 A.D.2d 956, 663 N.Y.S.2d 1025 (N.Y. App. Div. 4 Dep't, July 3, 1997) (affirming permanent injunction against six-month residency requirement in 170 Misc. 2d 554, 649 N.Y.S.2d 988 (N.Y. Sup. Ct. 1996)); *Doe v. Wing*, No. 98/2903 (N.Y. Sup. Ct. July 30, 1998) (holding one-year residency requirement unconstitutional); *Warrick v. Snider*, No. 94-1634 (W.D. Pa. Dec. 9, 1997) (holding 60-day residency requirement unconstitutional); *Hicks v. Peters*, No. 98C3247, ___ F. Supp. ___, (N.D.Ill. July 16, 1998) (permanently enjoining 12-month durational residency requirement); *cf. Strong v. Collatos*, 593 F.2d 420 (1st Cir. 1979) (holding Massachusetts' durational residency requirement for receipt of veterans' welfare benefits unconstitutional).[15] All but two of these

[15] There is only one case in which any court upheld a public assistance waiting period of any length, and that case presented a restriction markedly different from the one at issue here. In *Jones v. Milwaukee County*, 168 Wis. 2d 892, 485 N.W.2d 21 (1992), the Wisconsin Supreme Court by a 4-3 majority upheld a 60-day "waiting period requirement" for general relief benefits. The court based its decision on its conclusion that "the 60 day waiting period [was] so substantially less onerous than the one year waiting period of *Shapiro*." *Id.* at 902. This distinction obviously has no application to the one-year period at issue here. The Wisconsin court took note of the fact that the 60-day waiting period was claimed necessary " 'to establish the bona fides of the applicant's residency.' " *Id.* at 904. In this case, by contrast, California does not assert that its one-year residency requirement is needed to establish bona fide residency. In

opinions postdate this Court's ruling vacating the prior decisions in the predecessor action to this one, underscoring the striking consistency in the lower courts' understanding of this Court's precedent. This broad uniformity strongly supports denial of the petition here.

No division exists among the four federal circuits where courts have been called on to construe this Court's precedent as to durational residency requirements like California's. Each decision relies upon the same body of case law from this Court, including *Shapiro*, *Memorial Hospital*, *Dunn*, *Zobel*, *Hooper*, and *Soto-Lopez*. Each compares for equal protection purposes the treatment of newcomer and longer term state residents, not residents of different states. Each rejects cost savings as sufficient justification for the durational residency requirements at issue. In all but three decisions strict scrutiny is applied, and in those applying rational basis analysis, the statute is also struck down as unconstitutional.

The analysis followed by the court in *Westenfelder v. Ferguson*, 998 F. Supp. 146 (D.R.I. 1998), is representative of the lower courts' understanding and application of this Court's precedent. Rejecting the state's argument that the state's one-year waiting period could be justified by the claimed interest in encouraging new residents to join the labor force, the *Westenfelder* court explained:

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addition, the Wisconsin requirement contained exceptions not present here which mitigated its impact, including exceptions for individuals who were born in the state, or came to the state to join a close relative or accept an offer of employment. *Id.* at 896.

> "[T]his logic would also require a similar waiting period for long-term residents of the State. A state purpose to encourage employment provides no rational basis for imposing a one-year waiting-period restriction on new residents only."

Id. at 155 (quoting *Shapiro*, 394 U.S. at 637-38). The *Westenfelder* court added:

> Defendant also argues that the State has a compelling interest in reforming its welfare system and experimenting with various ways of doing so. This is indeed a legitimate purpose. In the present context, however, it is unclear what "reform" is involved other than discriminating against new residents; indeed, "reform" seems to be a mere euphemism for a variety of purposes long held to be either constitutionally impermissible or at least not compelling.

Id. at 155.

The court also concluded that, even assuming *arguendo* that the statute was only subject to rational basis review, no "rational relationship to a legitimate state purpose" could be shown. *Id.* at 156 (citing *Hooper*, 472 U.S. at 623; *Zobel*, 457 U.S. at 65; *Shapiro*, 394 U.S. at 637-38; *Maldanado*, 177 F.R.D. at 332-33; *Warrick*, slip op., at 21-22; and *Roe v. Anderson*, 966 F. Supp. at 983). Like every other court to consider the question, the court held that the state's one-year "durational residency requirement does not rationally further the purpose of encouraging welfare recipients to seek work and achieve self-sufficiency. . . . " *Id.* at 156 (citing *Shapiro*, 394 U.S. at 637-38).

IV. CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Dated: August 17, 1998

Respectfully submitted,

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